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The Noose Media Bill

By Frank Snepp

Congress seems dead set on passing a "names-of-agents" bill that would make it a crime for anyone, even a journalist working from public sources, to expose undercover United States intelligence operatives. The question is, Why? Last year, the Supreme Court handed down a ruling against me, in U.S. v. Snepp, that makes the bill all but redundant.

The Court's decision arose out of my failure to seek the approval of my former employer, the Central Intelligence Agency, for "Decent Interval," a book I'd written about it. Though the Government never accused me of publishing anything confidential, the Court decided that I had violated both a C.I.A. secrecy agreement and an *implicit* "fiduciary's" obligation of trust by sidestepping the C.I.A.'s censors. By way of punishment, the Court gagged me — that is, barred me from writing about the espionage business without the C.I.A.'s approval — and stripped me of all my royalties.

Superficially, the case looked like a simple breach-of-contract action. It wasn't, thanks to the Court's reliance on the "fiduciary" principle. Even without signing a secrecy contract, the Court indicated, a Government employee can become subject to official censorship simply by assuming a position of trust.

You don't have to be a lawyer to appreciate what this means. In effect, the Court gave the executive branch a free hand to regulate the speech and literary output of any Government employee or ex-employee.

But the fallout from the ruling wasn't limited to the Federal bureaucracy. Traditionally, under the judicial concept of fiduciary duty, not only is the "trusted" employee liable for any breach of "confidence" or "trust," so is anyone who collaborates with him. In my case, the Government considered suing my publisher, Random House. It didn't, for fear of provoking a news-media backlash. Even so, the option was there.

Just before leaving office, President Carter's Attorney General, Benjamin R. Civiletti, had second thoughts about the legal monster spawned by my case, and issued guidelines limiting the ways in which the Supreme Court's ruling might be applied. But last September, the Reagan Administration revoked those guidelines. Commenting recently on the action, Mr. Civiletti interpreted it as proof of his successor's "desire to pursue *Snepp* suits against any present or past [Government] employee and any newspaper or publication. . . ."

Meanwhile, under the ruling in my case, Philip Agee, a renegade former C.I.A. agent, has been gagged. He can't expose any more C.I.A. operatives, as he has in the past, without risking a contempt-of-court citation and criminal sanctions. And since Mr. Agee is on the board of advisers of the Covert Action Information Bulletin, which likewise is given to "naming names," his liability as a "faithless fiduciary" may well extend to its editors. Certainly if the Government could prove that Mr. Agee contributes actively to their "names-of-agents" column, it could use the *Snepp* precedent to shut down the publication.

So why are Congress and the Administration pressing so hard for a "names-of-agents" bill?

The more generous explanation is that they've forgotten the *Snepp* decision and what it stands for. But there may be a more sinister reason. *Snepp* affords the media one safeguard that a "names-of-agents" bill wouldn't.

In order to silence the press under the precedent arising from my case, the Government would have to show that a journalist got his offending lead — and it need not be the name of a C.I.A. agent, or even a secret — from a Government official or ex-official. The proposed legislation, on the other hand, would allow for prosecution even if the journalist's source was a book from the public library.

So much for the sanctity of investigative journalism.

Defenders of the bill say that it isn't directed at mainstream journalists, and have attempted to build protective caveats into both the Senate and House versions. The caveats amount to little more than a litmus test of a journalist's "intent" (if he's demonstrably anti-C.I.A., he gets clobbered). A far better guarantee of press freedoms, and free speech, would be a scrapping of the bill altogether.

With the *Snepp* decision in its armory, the Government has more than enough legal firepower to stop those against whom the bill is ostensibly aimed. Its passage therefore would be an act of political cynicism, and one with a terrible message for us all. It would mean that Congress and this Administration are merely using the Agees and their ilk as pretexts for mounting a massive and totally gratuitous assault on the press and the First Amendment.

Frank Snepp, who was a Central Intelligence Agency analyst in Vietnam and wrote about American blunders there, is writing a book about national security and the law.